

REMARKS

The Examiner has required an election in the present application between:

Species I, claims 1-7, 13-15 and 21-23; and

Species II, claims 8-10.

For the purpose of examination of the present application, Applicants elect “Species” I, of claims 1-7, 13-15 and 21-23 with traverse.

Claim(s) 1-7, 13-15 and 21-23 are directed to the elected species.

The election of species requirement in the above application is respectfully traversed. As an initial matter, it cannot be determined from the Office Action whether the examiner is requiring restriction between two allegedly independent and distinct inventions or is making an election of species requirement. Therefore, it is respectfully requested that the examiner either confirm in the next Office Action that an election of species requirement was intended or, alternately, present information to support a restriction requirement if the Office Action actually intended the April 27, 2006, Office Action to be a requirement for restriction. It is respectfully submitted that the April 27, 2006, Office Action does not provide proper support for requiring either an election of species or restriction, and therefore, regardless of which requirement is being raised, this requirement is respectfully traversed.

ELECTION OF SPECIES

The Office Action states that an election between first and second species is being required and indicates a first species is shown in “claims 1-7, 13-15 and 21-23” and that a second species is shown in “claims 8-10.” As provided in MPEP 806.04(e), “Claims are never species.” Species are generally identified by referring to different groups of figures in which the different species are shown. It is submitted that the statement “because of the distinct features as depicted in the figures” does not satisfy this burden. It is respectfully submitted that a proper election of

species requirement has not been presented and that the record in no manner shows or suggests that different species are disclosed. Applicant has “elected” a group of claims in order to fully respond to this Office Action, but it is respectfully submitted that no species have been identified for applicant to elect. The withdrawal of the election of species requirement is therefore respectfully requested.

If this requirement is not withdrawn, it is respectfully requested that the examiner provide authority for identifying “species” as groups of claims and explain which drawing figures show the first species and which drawing figures show the second species so that Applicant can better understand this requirement.

“Restriction” is referred to in paragraph 4 of the Office Action, and therefore, the examiner may have intended to make a restriction requirement. However 1) the existence of independent and distinct inventions has not been shown and 2) it has not been shown that maintaining all claims in this application would constitute a serious burden on the examiner. Paragraph 4 of the Office Action, refers to a “separate status in the art.” However, no separate status in the art for the different “species” has been shown. Therefore, if a restriction requirement is intended, it is respectfully requested that the examiner provide a further Office Action in which the information necessary to support a restriction requirement is provided.

Because no grounds for requiring election or restriction have been presented, it is submitted that all claims should remain pending in the present application. The withdrawal of the election/restriction requirement and the examination and allowance of all claims is earnestly solicited.

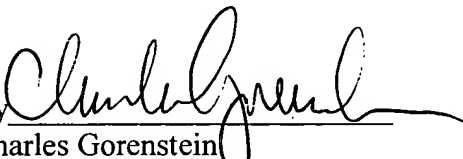
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Scott Wakeman, Registration No. 37,750 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

- ☐ Attached is a Petition for Extension of Time.
- ☐ Attached hereto is the fee transmittal listing the required fees.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: May 25, 2006

Respectfully submitted,

By 

Charles Gorenstein
Registration No.: 29,271
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant